

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 22, 2010

D056831 Morgan v. The Superior Court of San Diego County/People
The petition is denied.

D056869 In re Deere on Habeas Corpus
The petition is denied.

D056810 In re Bennett on Habeas Corpus
The petition is denied.

D056785 In re Rosser on Habeas Corpus
The petition is denied.

D054242 Cirillo et al. v. Crooks
It is ordered that the opinion filed herein on March 2, 2010 be modified as follows:

1. The following section is added to page 7 of the opinion:
C. Attorney Fee Award

The trial court concluded that Margaret and Joan were entitled to their attorney fees paid out of the trust under the common fund theory. The trial court ordered Margaret and Joan to submit their attorney fee documentation to the new trustee, and ordered the trustee to present the information to the court with a request for reimbursement for "whatever portions of the fees she believes are attributable to the common defense of these actions."

Crooks does not contend that the trial court abused its discretion in awarding Margaret and Joan attorney fees under the common fund theory. (*Kasperbauer v. Fairfield* (2009) 171 Cal.App.4th 229, 234 [abuse of discretion standard applies to the trial court's decision granting fee request payable from the trust's assets].) Rather, he asserts that Margaret and Joan are not entitled to all the attorney fees they incurred for their duplicative efforts. While Crooks may be correct, this issue is not properly before us as there is no order fixing the amount of attorney fees awarded to Margaret and Joan in the appellate record.

There is no change in the judgment. The petition for rehearing is denied.

D055843 In re Jacob M., a Juvenile
The order is affirmed. O'Rourke, J.; We Concur: Nares, Acting P.J., Irion, J.

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DIVISION ONE

March 22, 2010 (Continued)

- D056668 D.P. v. Superior Court of San Diego/San Diego County Health and Human Services Agency**
No timely petition for writ relief has been filed. The notice of intent is deemed to be abandoned. The case is dismissed.
- D056934 Bank of the West v. Ashurst Land & Cattle et al.**
The petition for writ of supersedeas, response and request for stay have been read and considered by Justices McDonald, McIntyre and Aaron. The petition is denied.
(1of2)
- D056934 Bank of the West v. Ashurst Land & Cattle et al.**
The petition for writ of supersedeas, response and request for stay have been read and considered by Justices McDonald, McIntyre and Aaron. The petition is denied.
(2of2)
- D056847 Aceves et al. v. Pacific Trades Construction and Development**
Upon written request filed by appellant, the appeal is dismissed as to Original Sid Blackman Plumbing, Inc. only, and the remittitur is ordered to issue immediately.
(Cal. Rules of Court, rule 8.244(c)(2).)
- D056994 Grossmont Union High School District v. Superior Court of San Diego County/Helix Charter High School**
The petition for writ of mandate and request for stay have been read and considered by Justices McDonald, McIntyre and Aaron. The petition is denied.
- D056985 Burnett v. Superior Court of San Diego County/People**
The petition is denied.
- D056746 In re Williams on Habeas Corpus**
The petition is denied.
- D056835 In re Polley on Habeas Corpus**
The petition is denied.

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- D056923 Sos v. Superior Court of San Diego County/Mortgage Electronic Registration Systems, Inc., et al.**
The Request for Permission to File a Writ Petition received by this court on March 19, 2010, is denied. (Code of Civ Proc. 391.7, subd (b).) The clerk of the court is directed to strike the file stamp and return the petition filed March 8, 2010, and the filing fee of \$655.00 (money order).
- D055608 People v. Toney**
The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., Nares, J.
- D054699 Arterberry v. County of San Diego et al.**
The order is affirmed. The County is entitled to costs on appeal. CERTIFIED FOR PUBLICATION. McConnell, P.J.; We Concur: Huffman, J., Aaron, J.
- D055782 In re Destiny C. et al., Juveniles**
The orders are affirmed. McIntyre, J.; We Concur: McConnell, P.J., Nares, J.
- D053833 People v. Palma**
The judgment of conviction is affirmed.
Benke, Acting P.J.; I concur: Huffman, J., I concur in the result: McDonald, J.
- D054877 Nomil, Inc. v. M.R. Contreras Construction, Inc., et al.**
The judgment is affirmed. Contreras is entitled to costs on appeal.
McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.
- D055202 Leader et al. v. Cords**
(Certified for Publication) The March 23, 2009 order is reversed insofar as it denies Rachel and Adam attorney fees and costs under section 17211, subdivision (b). The matter is remanded to the probate court for further proceedings in accordance with this opinion. Rachel and Adam are entitled to costs on appeal.
McConnell, P.J.; I Concur: Aaron, J., I Concur in the Result: Huffman, J.
- D054560 Sanchez et al. v. San Diego County Office of Education et al.**
The judgment is affirmed. SDCOE is entitled to its costs on appeal. CERTIFIED FOR PUBLICATION. McDonald, J.; We Concur: McConnell, P.J., Aaron, J.
- D055826 In re Yesenia S., a Juvenile**
The order is affirmed. Irion, J.; We Concur: Huffman, Acting P.J., Haller, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 23, 2010 (Continued)

D053340 People v. Throop

The judgment of conviction is affirmed.
Benke, Acting P.J.; We Concur: Nares, J., McIntyre, J.

D053900 Cohen et al. v. Automobile Club of Southern California et al.

The petition for rehearing is denied.

D056489 People v. Kanter

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.360(c)(5)(A). The appeal is dismissed.

D056561 In re Liftee on Habeas Corpus

For good cause shown, respondent is ordered to show cause why the relief requested should not be granted. Respondent may file a return within 30 days of this order. Petitioner may file a traverse within 20 days after the return is filed. Absent a request by the parties within 10 days after the return is filed, oral argument will be deemed waived. If a party requests oral argument, the request should be in letter form with proof of service on the other parties. The letter should also identify the focus of the party's argument and the amount of time requested, not to exceed 15 minutes.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
March 24, 2010

- D056339 People v. Rabenberg**
Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)
- D054564 Quigley et al. v. Toler**
The request for publication of the opinion filed March 10, 2010, is denied.
- D056905 Webb v. San Diego Pain Management Clinic et al.**
Because appellant did not timely pay the filing fee, the appeal is dismissed. (Cal. Rules of Court, rule 8.100(c)(3).)
- D055081 In re Marriage of Hunter**
Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 8.220(a). The appeal is dismissed.
- D057000 Bryan v. Superior Court of San Diego County/Ardisoni**
The petition is denied.
- D055459 Intergulf Development v. Superior Court of San Diego County/Interstate Fire & Casualty Company**
Let a peremptory writ of mandate issue directing the superior court to vacate its July 6, 2009, order granting Interstate's petition to compel arbitration pursuant to section 2860, subdivision (c), and enter an order denying the petition to compel arbitration. Intergulf is entitled to costs in the writ proceeding. CERTIFIED FOR PUBLICATION.
McIntyre, J.; We Concur: Haller, Acting P.J., Aaron, J.
- D055879 United Enterprises, Inc., et al. v. Superior Court of San Diego County/Royal Indemnity Company**
Let a peremptory writ of mandate issue directing the superior court to vacate its August 20, 2009 order denying United's motion to stay Royal's action for declaratory relief, and enter an order granting the motion to stay the declaratory relief action until the underlying federal and state actions are fully and finally adjudicated. The stay issued by this court on September 25, 2009 is vacated. United is entitled to costs in the writ proceeding.
McIntyre, J.; We Concur: Haller, Acting P.J., Aaron, J.
- D054532 Leach v. Kleveland**
The judgment is affirmed. Kendall Kleveland shall recover his costs on appeal.
Nares, J.; We Concur: Benke, Acting P.J., Irion, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
March 24, 2010 (Continued)

D054342 People v. Judge

The case is remanded to the trial court to determine whether the Attorney General can demonstrate the constitutional justification for imposing on SVP's a greater burden than is imposed on MDO's and NGI's in order to obtain release from commitment. In all other respects, the judgment is affirmed.
Irion, J.; We Concur: Nares, Acting P.J., McIntyre, J.

D053942 People v. Bravo

The judgment is affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., Irion, J.

D055356 In re Shockman on Habeas Corpus

The petition for rehearing is denied.

D056860 Golden v. Lasher

Because appellant did not timely pay the filing fee, the appeal is dismissed.
(Cal. Rules of Court, rule 8.100(c)(3).)

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March 25, 2010

- D056816 A.R. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
No timely petitions for writ relief have been denied. The notices of intent as to A.R. and Shawn R. are deemed to be abandoned. The case is dismissed.
- D056761 L.J. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**
The attorney for petitioner L.J. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. No timely petition for writ relief has been filed for Brittany M. The notice of intent is deemed to be abandoned. The case is dismissed.
- D054241 In re Marriage of Mataele and Brittain**
Judgment affirmed. Appellant to pay respondent's costs on appeal.
Haller, J.; We Concur: Benke, Acting P.J., Irion, J.
- D055768 People v. Smith**
Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)
- D055806 People v. Ortiz**
The judgment is affirmed. Benke, J.; We Concur: McConnell, P.J., Irion, J.
- D056586 Yoon v. Scwilk**
The court has received and considered the parties' letter briefs regarding the timeliness of appellant's notice of appeal. The matter having been considered by Presiding Justice McConnell and Associate Justices McIntyre and McDonald, the appeal is dismissed on the ground that notice of appeal was filed beyond the 180 day outer limit for filing an appeal. (Cal. Rules of Court, rule 8.104(a)(3)).
- D056748 Allen v. Reilly**
Pursuant to California Rules of Court, rule 8.140, the appeal filed February 4, 2010, is dismissed for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)).
- D053464 People v. Cissna**
The request for rehearing is denied. (Certified for partial Publication) The opinion filed February 26, 2010, is modified. No change in judgment.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
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DIVISION ONE
March 26, 2010

- D046984 People v. Horn**
The judgment is affirmed. McConnell, P.J.; We Concur: Nares, J., Irion, J.
- D052067 Preferred Western Collection, Inc. v. Upper Group, Inc., et al.**
The judgment for Preferred Western and the order denying the joint motion of Preferred Western and Mooney for attorney fees and costs are affirmed.
Each party to bear their own costs on appeal.
Benke, Acting P.J.; We Concur: Nares, J., McIntyre, J.
- D056843 In re Jackson on Habeas Corpus**
The petition is denied.
- D054866 Risely v. Interinsurance Exchange of the Automobile Club**
The judgment is reversed. Risely is entitled to costs on appeal.
Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.
- D056772 In re Cook on Habeas Corpus**
The petition is denied.
- D053952 People v. Sengamphan**
The judgment is affirmed. Haller, J.; We Concur: McConnell, P.J., McDonald, J.
- D055316 People v. Macon**
The trial court is ordered to correct its minutes from the sentencing hearing of December 4, 2008, and the abstract of judgment by striking the references to the imposition of restitution and parole revocation fines. The trial court is further ordered to forward a copy of the corrected abstract of judgment to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.
McConnell, P.J.; We Concur: Huffman, J., McDonald, J.
- D055669 People v. Lucero**
The judgment is affirmed. McConnell, P.J.; We Concur: McIntyre, J., Aaron, J.
- D057028 People v. Davis**
The denial of a petition for writ of habeas corpus is not appealable.
The appeal is dismissed.
- D056234 Reis v. Pressman**
Appellant has failed to file a brief after notice given pursuant to California Rules of Court, Rule 8.220(a). The appeal is dismissed.

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March 26, 2010 (Continued)

- D056887 In re Harlan on Habeas Corpus**
The petition is denied.
- D056915 Tran v. Superior Court of San Diego County/Arellano et al.**
The petition is denied.
- D056996 People v. Daughtery**
The petition is denied.
- D056102 Escondido Mobileparks West One et al. v. Superior Court of San Diego
County/Mobileparks West Homeowners' Association**
At the request of petitioners, the petition for writ of mandate is dismissed. The stay
issued by this court on October 23, 2009, is vacated.
- D056841 In re Daughtery on Habeas Corpus**
The petition is denied.
- D056883 In re Wallace on Habeas Corpus**
The petition is denied.
- D056423 In re Harrison on Habeas Corpus**
The petition is denied.
- D057031 505 West Madison Apartments et al. v. Superior Court of San Diego
County/Johnson**
The petition is denied.